

THE LATTER-DAY SAINTS' MILLENNIAL STAR.

"Thou shalt arise, and have mercy upon Zion: for the time to favor her, yea, the set time, is come."—PSALMS.

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DIVORCE JURISDICTION OF PROBATE COURTS.—DISSENTING OPINION OF HIS HONOR ASSOCIATE JUSTICE EMERSON.

In the Supreme Court, May 21st, after Associate Justice Boreman read his opinion declaring that Probate Courts in this Territory had no jurisdiction in divorce matters, Chief Justice McKean concurring, Associate Justice Emerson delivered the following dissenting opinion:

Alice Cast, complainant,	} Supreme Court of Utah Territory.
vs. Erick M. Cast, defendant.	

I am compelled to dissent from the opinion just delivered. I cheerfully bear testimony to the patient investigation of my brethren. I recognize their greater learning, their maturer wisdom, their riper judgment, and I bow before their superior authority. Yet I cannot surrender the convictions of my own mind, convictions carefully and deliberately formed, and sincerely and conscientiously entertained. I propose, in as few words as I can, to give the reason for my dissent.

The bill in this cause was filed by the complainant in the Third District Court, to obtain a divorce from the defendant, on the ground of "failure to support, cruel treatment and mis-

conduct on the part of the defendant, rendering it impossible for the parties to live in peace and union together, and that their welfare required a separation." These are all statutory grounds for a divorce. Upon the part of the defendant it was insisted in the court below that the District Court had no jurisdiction of this class of cases. That court held that it had. The case was heard upon pleadings and proofs, and a decree of divorce from the bonds of matrimony was granted as prayed for. The defendant appeals to this court.

The question involved in this case is one of great interest. It has been extensively and ably discussed by the bar, and has awakened much interest and great anxiety in the minds of all classes of citizens of the Territory. It has been before the Supreme Court of the Territory at different times, and it is claimed that the decisions there are conflicting. The same question has also been raised before some of the present members of this court, when sitting as Judges of the District Courts, and the decisions there have not been uniform.

The terrible effects that would

follow if one view taken of this case should be established as law, adds to the interest and public anxiety connected with the question in this case.

For twenty-two years one class of courts in this Territory have taken, under the Territorial law, jurisdiction in this class of cases, and marital and vast property rights have grown up under and out of these courts. And now their jurisdiction over the subject matter is not only questioned but denied.

For these reasons I was desirous that the decision in this case should be postponed from the time it was submitted at the last October term until the present adjourned term, that the conclusions arrived at might be the result of thorough investigation and careful study.

Section 1 of an act of the Territorial Legislature, entitled "An act in relation to Bills of Divorce," approved March 6th, 1852, provides: "That the Court of Probate in the county where the plaintiff resides, shall have jurisdiction in all cases of divorce and alimony, and of guardianship, and distribution of property connected therewith." The balance of the act prescribes for what causes a divorce may be sought, and gives a mere outline or skeleton of the mode of procedure in such cases, with some minor details as to disposition of property, custody of minor children, &c., which are in no way important in this case.

Nowhere in the chapter is there any other than the Probate Court referred to, to take the jurisdiction of this class of cases.

The right of the District Courts of Utah to grant divorces from the bonds of matrimony for statutory causes is the real point in issue.

The question arises under the act of the Territorial Legislature above referred to, and supposed to involve some important considerations regarding constitutional law.

It will be seen that the Territorial Act specifies the causes for which divorces may be granted, and in express terms confers the jurisdiction to grant them upon the Probate Courts. It does not purport to give jurisdiction to the District Courts, nor is it claimed that there is any other legislation

either National or Territorial, that in terms undertakes to do so.

On the Territorial law, therefore, as it stands, if it is valid, the Probate Court may grant divorces, but no other court can, unless the power is to be derived by implication from the general terms in which the authority of other courts is conferred.

The argument on the part of the appellee embraces, and may be summed up in the following propositions:

1st. That authority to grant divorces is inconsistent with the idea of a probate jurisdiction, and therefore could not be conferred upon a court which the original law provided for as a Probate Court.

2nd. That though for this reason the Territorial act in question is void so far as it assumes to empower the Probate Court to grant divorces, yet that this void part does not infect the rest, and the act is entirely valid so far as it specifies the causes for which divorces may be granted.

3rd. That there being then a right to a divorce, when one or more of the specified causes exist, and no court expressly and in terms empowered to grant it, the District Court of necessity, and under its general grant of powers, may do so.

These three propositions it becomes necessary to examine successively, and if any one of them shall prove to be unsound, this proceeding must fail. That every one of them is baseless is my undoubting conviction.

The proposition that the idea of a Probate Court necessarily excluded authority in matters of divorce, sounds strangely enough when it is borne in mind, that our institutions come to us from a country where jurisdiction in matrimonial causes has always been exercised by the same judges to whom the law has confided authority in probate matters. It is true the Ecclesiastical Courts, which until recently have been the Probate Courts in England, were not empowered to grant divorces from the bonds of matrimony, but neither were any other courts; and so far as divorce was matter of judicial cognizance at all, it was left exclusively to the ecclesiastical tribunals. Bishop, Mar. and Div. ch. 3. Indeed Blackstone, speaking of the

jurisdiction of these courts, which in many other particulars had been frequently questioned, adds that "matrimonial causes or injuries respecting the rights of marriage, are another and a much more undisturbed branch of the ecclesiastical jurisdiction;" and that causes matrimonial are now so peculiarly ecclesiastical that the temporal courts will never interfere in controversies of this kind, unless in some particular cases, "as when a marriage is called in question after the death of parties, and when it would tend to bastardize and disinherit the issue;" 3 Blackstone, com. 92, 93.

And so thoroughly was the propriety of a union of probate and divorce jurisdiction fixed in the English mind, that when recently it was deemed best to confer authority to grant divorces from the bonds of matrimony upon the courts, the Probate Court was the court selected to exercise that jurisdiction. (3 Cooley's Blackstone, 95 note; Brown & Hadley's Commentaries, vol. 3, ch. xiv.) And though the Lord Chancellor and the Judges of the Superior Courts of common law might sit in that court with the Judge of Probate, the latter was the judge ordinary, and usually sat alone.

The English practice is therefore distinctly against the proposition taken, and is nearer in harmony with the Territorial statute than with the opposite view.

The American practice affords little more support, if indeed it does any, to the appellee's first proposition. There is no such thing as uniformity in the American States as to the jurisdiction that may be joined with that of the probate of wills, or, on the other hand, as to the courts that shall take cognizance of applications for divorce. In some States the constitution or the laws have been careful to confine the Probate Courts to matters concerning the administration of estates; but in others the probate jurisdiction is united with that of common law and chancery causes.

An example of the latter class may be seen in Iowa, where authority over probate matters is vested in the Circuit Courts, which are also with the District Courts empowered to try causes at law

and in equity, and to grant divorces. Code 1872, pp. 399, 410.

In perhaps one-half of the States of the Union, the courts having probate powers have also a somewhat multifarious jurisdiction, embracing in some cases criminal jurisdiction, of which Oregon is an example. (Const. Art. 7, 12.) It would be idle to undertake to deduce any general rule from the constitutions and laws of the several States, as to the classification of the probate and divorce jurisdiction, or as to the delegation of either to any particular description of court; but this may be said in general, that divorce is sometimes a proceeding in the common law courts, sometimes in the equity courts, and may sometimes be had in the courts exercising probate powers; so that the question of the delegation of divorce jurisdiction, where not determined by the State constitution, seems to have been always regarded as one addressed to the legislative decision, and to be determined not according to any fixed rules, but according to the legislative view of what was most expedient.

If these views be correct, the whole argument for the appellee falls to the ground. The Organic Act did not specifically provide for cases of divorce, and it became necessary, therefore, for the Territorial Legislature to prescribe the jurisdiction when it prescribed the causes. A case of divorce is not intrinsically a law case, for it was unknown to the common law. It is not intrinsically a chancery case, for it was unknown to equity jurisprudence. The New York cases of *Wightman vs. Wightman*, 4 John's, Ch., 343, and *Perry vs. Perry*, 2 Page, 505, relied upon by the appellant, are not authority further than this: that a court of equity, when a supposed marriage is not such in fact, but is void from inception, may declare it so, as they may declare any other contract void! But the true doctrine undoubtedly is that stated by Mr. Bishop, that no judicial tribunal in this country can take jurisdiction of divorce cases without the authority of statute. Bishop, Mar. and Div., 4th ed., sec. 71. It is a proceeding *ex genereis*, and its being so regarded accounts for the diversity in American legislation.

It is not denied that the Territorial Legislature possesses a general authority to legislate on domestic concerns. Indeed that right has been most fully recognized by the Supreme Court of the United States in the case of other Territories, as well as of this, and the question is no longer open to argument. *Miner's Bank vs. Iowa*, 12 How., 1; *Vincennes' University vs. Indiana*, 14 How., 268; *Clinton vs. Englebrecht*, 13 Wall, 434. And as no other defect in the Territorial act is pointed out, than the excess of authority in granting divorce powers to the Probate Court, and it is not claimed that any specific provision of the Organic act is violated, it would seem as if the decision of the case might be rested here.

All presumptions favor the validity of legislation, and those who assail it must be able to show how, and why, and wherein it violates the fundamental law. The remedy for unwise legislation does not rest with the courts. *Commonwealth vs. McClosky*, 2 Rawle, 374; *Sill vs. Village of Corning*, 15 N. Y., 303; *Cooley's Const. Law*, 168, and cases cited. This court has nothing to do with legislative policy. "We are not made judges of the motives of the Legislature; and the court will not usurp the inquisitorial office of inquiring into the *bona fides* of that body in discharging its duties." *People vs. Draper*, 15 N. Y., 555; *Sunbury and Erie R. R. Co. vs. Cooper*, 33 Penn. Sta., 278; *Baltimore vs. State*, 15 Md., 376.

But if we were to concede that the Territorial act was invalid so far as it designated the divorce courts, I cannot conceive how the other parts of the act could be of any force whatever. That act was passed, as is very manifest from its provisions, for the specific purpose of empowering a particular class of courts to grant divorces. It was homogenous, and there is not a provision in it from which we may gather an intent that in any contingency any other court should receive this power. There is no room to suppose, or to suggest even, that the legislative intent was that if the Probate Court would not act some other court not named should do so. No one imagines or pretends that

such were the facts. On the contrary it will scarcely be denied, that when the District Court takes to itself the divorce jurisdiction, it does so in distinct disregard of the legislative will; it enforces the other which the Legislature would never have passed by itself, and in a manner to defeat the legislative intent.

Now, it is admitted that a statute may sometimes be held void in part, and valid as to the remainder, but this can never be done without the most manifest usurpation of legislative authority, except where the court on an inspection of the whole statute can satisfy itself that it is enforcing a legislative intent in so doing.

It can never so hold without the most manifest impropriety when it is plain that to do so, would defeat the legislative intent.

No court is at liberty to split legislation into fragments, and arbitrarily, from its own notions of what the law ought to be, give effect to one fragment to the rejection of the rest. The furthest a court can go is this; if when a void part of a statute is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the legislative intent, wholly independent of that which was rejected, then it may be sustained.—*Cooley's Const. Law*, 178; *Warren vs. Charlestown*, 2 Gray, 99; *State vs. Berry Co.*, 5 Ohio N. S. 507; *State vs. Dousserman* 28 Wis. 547; *Compau vs. Detroit*, 14 Mich. 272.

Applying this rule to the present case, the statute fails entirely, if the probate jurisdiction fails. No one can pretend that without the portion which confers that, the statute is either complete in itself or capable of being executed. No one attempts to execute it except by interpolating provisions, or by applying the doctrine that of necessity the District Courts must take jurisdiction, a most dangerous doctrine, when the judges themselves are to determine the necessity, and measure their own power; and a most manifest unsound doctrine, for it is among the very fundamental principles of free government, that the jurisdiction of courts shall be prescribed for them, and the judgments of the very highest courts in the land.

may be disregarded everywhere, when it can be shown that the only authority the court had for rendering them was its own assumption of power. For while the authority of a court of a general jurisdiction may be presumed, it may always be disproved; it must always emanate from the sovereignty, and the expression of the will of the sovereignty must be found in the fundamental law, or in the statutes. —Bouv. Law Dict. "Jurisdiction."

Courts take their powers by grant, and not by any process of ratiocination as to what those powers should be. In other words, courts even as to their own jurisdiction do not make the law, but they administer. The judiciary must never lend themselves to the demands of the hour, or of any class or party, to make the written law echo, not the purposes or the intent of the framers, but such intents and purposes as they may think the framers ought to have had; its power never should be exercised to give effect to the will of the judge, but always to the will of the legislature or the will of the law; 1 Kent's Com., 277. And to the honor of the judiciary be it said that no matter what the temptation or pressure of circumstances may have been, the higher courts throughout the land have universally held to this doctrine.

It has been well said by an able jurist and a learned author, Judge Redfield, "that the country has more to dread from a timid or a time-serving judiciary, than from all other sources, * * * and that the day is not very remote when good men of all sections, and all parties, will unite in ascribing our salvation more to a pure, able, incorrupt and fearless judiciary, than to all other causes and forces combined, and if the time ever comes for the fall of this free republic, its enemies will enter the citadel through the broken walls of the great bulwark of liberty, caused by the want of principle, or the dread of self-sacrifice in her judges.

Courts refuse to interfere with unwise and even oppressive legislation, if within constitutional bounds, claiming that they can arrest the legislative will only when it conflicts with a fundamental law; that the remedy in

such cases is by an appeal to the justice and patriotism of the representatives of the people, and if that be wanting or fails, then to correct the evil in their sovereign capacity. Bennett vs. Boggs, Baldwin, 74; Satterly vs. Matthewson, 2; Peters, 4—12.

But suppose we make the further concession, that the Territorial act is void so far as it gives jurisdiction to the Probate Courts, but valid so far as it fixes the causes for divorce; it is still denied that the District Court can take jurisdiction. The idea that they are to have the authority because a proceeding for divorce assumes the same form as a suit in equity can have no foundation when it is seen that a divorce suit is a special proceeding and not an equitable cause at all. We might as well call a criminal suit a matter of equity jurisdiction, if the legislature should see fit to provide that the facts might be investigated on a bill, instead of an indictment or information, as unquestionably it might do in any case where the original law did not make other provisions.

These matters of form are left with the legislative discretion, but the substance of things is not to be determined by the forms. If we hold this law valid in so far as it gives a right to divorce for certain causes, the result must be this: not that the District Courts of necessity take the jurisdiction, but that divorce for the causes prescribed must be granted by that authority which in English and American law has always been recognized as possessing the power where it had not expressly and in terms been given to any particular court.

Now, it has been seen that in England, so far as any court had this jurisdiction, it was possessed by the ecclesiastical courts. But as to divorce from the bonds of matrimony the English doctrine was that the authority was not judicial but legislative, and Parliament alone could exercise it; 1 Blackstone's Com., 441. In this country it has been customary to confer the authority upon the courts, but in the colonial period it was exercised by the Legislature and the overwhelming weight of American authority is that the right of divorce per-

tains to the Legislature when not expressly delegated to the courts. Bishop Mar. Div. ch. 34 and cases cited. Cooley's Const. Law. 110.

This is so well understood and has been so often judicially declared, that whenever it has been deemed necessary to establish a different rule, express constitutional provisions have been adopted for that purpose, and these either name a court to exercise the authority, or they prohibit the Legislature from exercising it, so that it becomes a necessity that some law should be passed conferring the jurisdiction upon the courts. In other words the settled American doctrine is that the granting of a divorce, is not, of necessity, a judicial act, so that it may still be done by the Legislature, though all judicial power has already been conferred upon another department. *Shaw vs. Pease* 8 Cowen 541; *Crane vs. Meguennis* 1 Gill and J. 463; *Gaines vs. Gaines* 9 B. Munroe 295; *Deahen vs. D-shen* 1verg 110; *Wright vs. Wright* 2 Md. 429; Bishop Mar and Div. 686.

Giving a right to a divorce, therefore, does not imply that it must be granted by the courts. There must be something more than this: there must be the designation of a court, or the presumption would rather be that the Legislature was prescribing for its own government the cases in which it would exercise the legislative power of annulling the bonds of matrimony, just as it might prescribe in advance the cases in which it would or would not change the name of parties, or license the sale of lands, or pass private laws upon any other subject whatever.

The doctrine of the appellee, if it proves anything, proves too much, for if it has any soundness, any validity whatever, it proves, not that the District Court may grant divorces, but that the Legislature, having determined what should be sufficient causes for divorce, has stopped short at that point and being unwilling to vest the competent courts with power to grant them, has thought proper to leave the jurisdiction where, by the settled rules of English and American law, it is inherent, that is to say in the Legislature.

This must be the rule of principle, and any ruling that any court can take the power of necessity, is one of assumption, and it seems to me of usurpation.

In view of what has been said, it is quite unnecessary to discuss the question, whether, if the Probate Courts have jurisdiction, the District Courts have not a concurrent jurisdiction also. If legislation is required to give jurisdiction to any court, this case is determined when we find that no legislation has designated the District Courts for this purpose. It cannot take it by intendment, or because of its general authority in law and equity cases for the reason already given.

To hold that it may, is to legislate, and when courts assume to legislate, they place themselves above the law, and beyond any restraint but the individual will of the judges.

The judgment of the court below must be reversed, and the bill dismissed for want of jurisdiction over the subject matter in that court.—*Deseret News*.

STAMPING OUT POLYGAMY.

Yesterday the House passed the bill which practically excludes all Mormons from the jury-box in Utah, and puts the courts and the machinery of government in the hands of the Gentiles, who compose a small minority of the population. The bill has been drawn up with special reference to this very object. It is strong as legal wit and learning can make it. If it becomes a law the Mormons will have no redress in the courts, and practically no hand in the government, of

the Territory they have converted from a barren desert into a fruitful and prosperous commonwealth. And the bill received 155 votes out of 214.

The action of the House yesterday raises a serious question which the Senate should consider well before it passes this bill. Has Congress any right to put the majority of a people into the hands of a small minority? Would a government which practically excludes three-quarters of the people from the jury-box for religious scrup-

ples be republican according to the spirit of the Constitution and the meaning of its framers? This is a serious question. It concerns the vital principles of our whole system of government. If Congress can legislate the Mormons out of the courts in Utah, what is to hinder its expulsion of Methodists in Colorado, or Unitarians in Massachusetts for that matter? It is worth while to consider who and what the parties are who clamored and intrigned most loudly and industriously for the passage of this bill. Mostly adventurers, eager for the plunder that they anticipate will fall into their greedy hands, they want to put the screws to these rich Mormons and squeeze the last penny from their plethoric pockets. They long to lay hold of the rich and beautiful fields these wicked polygamists have wrested from the wilderness and converted into gardens which surprise the agriculturists of the East. They have contrived a cunning and complicated legal process by which the thrifty professors of a semi-oriental religion shall be made to disgorge for their special benefit. It is not polygamy that they want to get rid of, but plunder that they want to get. And they are trying to re-enact in Utah the persecutions to which the Jews were subjected throughout Europe for a thousand years. Polygamy may be wrong, but is it worse than robbery? Is it worth the while to try to convert the deluded Mormons by handing them over to the tender mercies of legal spoilers and land sharks? The manifest motive behind the proposed legislation, and the notorious character of the men who are most urgent in securing and have spent months in lobbying for it in Washington, should make the Senate hesitate long before endorsing the action of the House.

This is a feature of the measure which demands thorough investigation. It should kill the bill. But this is not the fundamental objection to it. Its whole principle is radically undemocratic and false. Admit that polygamy is unwise in policy, socially bad, and morally wrong. So are the lustful practices which are carried on in all our cities and large towns to an appalling extent. Does Congress propose

to expel whoever visits an improper place in any city or town from the jury-box? Look at the thing in the impartial light of a principle, and it becomes obvious at once that the House has taken a step in the wrong direction, which the Senate must see is not followed by another. Polygamy is doubtless a very bad thing, but is it any worse than the social evil which has defied the legislation and religion of all Christendom from the first? Polygamy, as practiced in Utah, is part of a religious system. It rests on what Mormons claim is a religious basis. They find support for it in their Scriptures, and quote scores of texts and examples to justify it from the Bible. It is regulated by religious rules, and kept under strict control by ecclesiastical law. To attack polygamy, therefore, as it is practiced in Utah, is to attack Mormonism, which, according to all our recognized principles, Congress has no more right to do than it has to attack Methodism or Presbyterianism or the religion of the Friends. Such an attack would be regarded as persecution, and all experience has shown that persecution is the poorest and worst way of dealing with an error of the head or of the heart. Affidavits are not arguments. Statutes never convince. Bailiffs do not make converts. Legalized robbery will not suppress a heresy. The burning of Nauvoo and the murder of a few hundred Mormons in Illinois, many of them innocent and helpless old men, women, and children, prolonged the existence of Mormonism, swelled its numbers, and made Utah what it is to-day. Legal proscription is the wrong way to deal with a thing so complicated and so rooted in with the deepest sentiments of human nature. Left to itself, to the social and moral and industrial influences of modern civilization, to economic laws, to the public sentiment of mankind, it is already drooping, and would eventually die. The railroad, the common school, the competitions of communities, the agitations of the press and platform, the spirit of a pure and practical and rational faith, will do in time what no legal persecution can effect.—*New York Graphic*, June 3.

THE LATTER-DAY SAINTS' MILLENNIAL STAR.

TUESDAY, JUNE 23, 1874.

ONENESS IN TEMPORAL MATTERS.

From a very early period in the history of the Church, unity in temporal as well as spiritual things has been strongly advocated by the servants of the Lord. Its necessity, as a fundamental principle in the faith and practice of the Saints, is a matter that all true Latter-day Saints will not question, but will acknowledge that it is a part of the everlasting Gospel, without which the plan of salvation would be incomplete. It is the grand principle by which the heavens are governed and made to harmonize, and by which love, peace and happiness exist in the glorious and eternal presence of the Almighty. By this same principle the heavens, earth and seas were brought into an organized existence, but when sin came into the world through man's disobedience, earth ceased to be the scene of universal love, peace and concord,—the elements of disunion were permitted to exercise their influence on everything mortal, that existed, or grew into existence, on the face of the earth. Before the transgression of man everything was in the most perfect state of harmony; and, undoubtedly, there were neither deserts, barren places, broken, rugged hills; nor mountains covered with eternal snow, and no portion of the earth was located in the frigid zone, so as to render the climate unproductive; but the earth was one vast and beautiful plain, suitable for cultivation and varied with gently rising hills and slopes, its climate varied by moderate changes of heat and cold, and the beasts of the earth were in perfect harmony with each other. By transgression the scene was changed and the earth, once whole, became separated into numerous parts, and became the abode of toil, sorrow and death; the productions of the earth were cursed, and man and beast became enemies to each other. Thus it was that peace and unity were destroyed from off the earth and the seeds of disunion were sown, which, after taking root, have come up again bearing fresh seed.

The Savior commenced the work of restoration by sacrifice,—in atoning for the original sin—the cause of the long separation of all things, temporal and spiritual. He marked out the way that men should walk in order to bring about this glorious consummation. He revealed the only plan by which men might become one in all things, even as he and the Father were one; and in view of bringing about this desirable condition of things, and of inspiring his disciples with loftier and nobler aims than they before had been inspired with, he taught them to pray that the will of God might be done on earth as it was in heaven,—that men should not only be obedient to the Divine will as had

already been made known, but that the same harmony which prevailed in heaven, and the unity which characterized all the works and operations of the heavenly hosts, might exist also on the earth and among all men.

In a revelation given to the Prophet Joseph Smith, the Lord expressly commanded the Saints, then but very few in number, as early as the year eighteen hundred and thirty-two, to unite their interests and become as one in all things—temporal and spiritual. The revelation says,—“Verily I say unto you, the time has come, and is now at hand; and behold, and lo, it must needs be that there be an organization of my people, in regulating and establishing the affairs of the storehouse for the poor of my people, both in this place and in the land of Zion, or in other words, the city of Enoch, for a permanent and everlasting establishment and order unto my church, to advance the cause, which ye have espoused to the salvation of man, and to the glory of your Father who is in heaven, that you may be equal in the bands of heavenly things; yea, and earthly things also, for the obtaining of heavenly things; for if ye are not equal in earthly things, ye cannot be equal in obtaining heavenly things; for if you will that I give unto you a place in the celestial world, you must prepare yourselves by doing the things which I have commanded you and required of you.” Two years only after the organization of the Church this system of temporal unity—this oneness and co-operative singleness of purpose in regard to the things of this world—this amalgamation of individual interests—was designed and sought to be established among the Saints. More than forty years have elapsed since this revelation was given to the Prophet Joseph, and yet the Saints—blessed as they have been with the riches, wealth and comforts of this earth—are, practically, no nearer perhaps to that condition of unity than they were then. The changing and varied circumstances of the people since that time may perhaps have afforded good and sufficient reasons so far for the non-fulfillment of this commandment. Be that as it may, however, the Lord has long since required this heavenly order to be adopted among his people, and it must sooner or later be established among them before the Savior makes his second advent.

From circumstances which are at present transpiring among the Saints in Utah, it would appear that the time had fully come when Zion, or the inhabitants of Zion, must observe this principle. The necessity of the establishment of the Order of Enoch in Zion has frequently been the burden of the discourses of the servants of God, since it was revealed to the Prophet Joseph as being a part of the great plan of salvation. The Saints, doubtless, have not advanced in the knowledge and practice of the principles of the Gospel as rapidly as the Lord would have them, or their condition would be much different than it is to-day. The history of the people of God, at various periods, shows how he has borne with their weaknesses, shortcomings and traditions,—how he has averted their destruction when they manifested even the slightest sign of repentance. Notwithstanding the sufferings the Savior underwent in consequence of the persecutions, bigotry and blindness of the Jews, his heart was drawn towards them, and he sought by every merciful means to save them from impending ruin. The Father and Son have been full of mercy and long-suffering for the human family. Men will be rewarded or condemned in proportion to the application they make of the light and knowledge imparted to them. The Latter-day Saints likewise have been the objects of Divine

leniency, and by the revelations of the Almighty to his servants and Prophets, he has imparted unto them food according to their ability and experience, and for that reason he has revealed line upon line, precept upon precept, here a little, and there a little. Hence, in the remarkable history of the Latter-day Saints, we can see the guiding hand of the Almighty,—how he has led them from one lesson to another, and from one stepping stone to another. The present movement of the servants of God—to more completely effect the union of his people by urging them to consolidate their means and labor—is another stepping-stone in the grand progress of the Gospel. The Work is onward—its character is a progressive one,—and when the Saints have gained one point, they must, in order to keep up with the march of Truth, pass on to another, until they become perfect even as God and Christ are perfect, or, as the Apostle Paul said,—“Therefore (not) leaving the principles of the doctrine of Christ, let us go on unto perfection,” &c. J. O. G.

THE POLAND BILL.—We are again placed under obligation to Hon. Geo. Q. Cannon for the *Congressional Record*, containing the report of the debate and division on the “Poland Bill,” which was passed, on the 2nd inst., in the House of Representatives.

We regret to find that a body of men, assembled to legislate for the peace, happiness and well-being of a great nation, should seek to deprive a portion of that nation of the rights and liberties fought for and secured by men who were inspired with the purest motives and the most patriotic sentiments. That freedom and religious tolerance which Washington and his compatriots struggled to secure for succeeding generations, as much as for their own, men would now abridge and confine within the narrow and contracted limits of their own prejudices, to the exclusion of those who might happen to be “Mormons.” Did we not know that the work in which the Latter-day Saints are engaged is the Lord’s work, and that the Evil One is actively operating against its progress, we could scarcely conceive it to be possible for men to be found who would perpetrate—in the face of a whole nation—so gross an injustice to a community, or section of people, as this bill does to the Latter-day Saints. The tyranny and despotism that it would impose upon the vast majority of the inhabitants of Utah would, by far, exceed the despotism of George the Third over the American colonists. In fact the latter would be totally insignificant when compared with the extent to which the despotism of the “Poland Bill” might go, if passed by Congress.

The bill has yet to be presented to the Senate for its consideration and action before it becomes law.

Commencing with our following issue we shall publish the above-named report, together with the bill as passed by the House.

RELEASE.—Elder John Clark is released from laboring in this Office, to return home with the June 24th company.

ABSTRACT OF CORRESPONDENCE.

We have been favored with a letter from Prest. A. Carrington, dated at Salt Lake City, May 29th, from which we learn that he was in the enjoyment of

good health, and as much interested as ever in the welfare of the Saints in Europe. He wished to be kindly remembered to the Elders laboring in the Mission.

We have also been favored with a perusal of two letters—one from Bishop Thomas Callister, of Fillmore City, Utah, and the other from Bishop Edward Partridge, also of Fillmore—addressed to Elder F. M. Lyman, Pres. of the Nottingham Conference. We are pleased to learn of the prosperity of the Saints in that part of Zion, and of the unanimity that prevails among them in their movements for the building up of God's kingdom on the earth. Brothers Callister and Partridge write encouragingly of the conduct of the people in Millard County, shown in their readiness and willingness to take hold of the counsels of the First Presidency and organize themselves on the principles of the United Order of Enoch. Steps have already been taken to organize in the county the various branches of manufacture and industry. The grand object is to lessen, and finally dispense with altogether, the enormous importations of articles that can be produced in the Territory as well as elsewhere.

THE MENNONITE IMMIGRATION.

An interesting measure now contemplated by Congress, is the bill to encourage the immigration of the Mennonites of Southern Russia, who to the number of some 50,000, desire to come to this country if they can obtain certain modifications of our land laws which will enable them to settle in communities, instead of being broken up and scattered like other immigrants. The Mennonites are a species of the Quakers, of German origin, and since the time of the Empress Catharine, have been growing in numbers in that portion of Russia bordering upon the Black Sea and the Sea of Azof, until they now have seven large and over one hundred smaller colonies. They do not live in communes, but in communities, in which each head of a family owns his own property and is as much independent of the rest as any citizen of this country is of his neighbors. Their common religion, however, binds them together and renders them desirous of associating themselves for the maintenance of their schools and churches. A correspondent, sketching their character, says:—

"Their sober mode of life, their intelligence and excellent education, and their practical experience, has made them exceptionally successful as farm-

ers. They are equally noted for farming on an extensive scale. Two thousand acres under cultivation, or from 25,000 to 30,000 sheep, are nothing unusual among them; in addition to which they have silk-worms and the necessary mulberry trees, as well as apricot orchards, hard-shelled almonds, English walnuts, wild olives, and superior grapes. They have been shipping 10,000,000 bushels of wheat per annum abroad, and in the London or Liverpool markets their wheat brings ten cents per bushel more than almost any other."

It is intended by them that they shall establish several colonies in different parts of the country, instead of all going together to any one section. The wheat-growers, for instance, are to go to Dakota; the sheep-herders to the Indian Territory or Texas, etc., etc. There is no doubt but that these Mennonites, self-restrained, industrious and intelligent, will make very valuable citizens wherever they may settle, and we would be very glad to see a colony of them brought to California. They would certainly find this State much better adapted to the prosecution of their accustomed industries than any other in the Union. The Senate bill introduced in their

behalf simply proposes to allow them to make their locations through a duly authorized agent in a compact body of any unoccupied public land, not mineral, not exceeding 180 acres at the minimum or 80 acres at the double minimum price for each applicant, and gives to the applicant named by the agent for each claim, the exclusive right of entry for two years, after which time the lands, if not taken,

are again open to public entry. The aggregate of lands to be held under this bill is limited to 500,000 acres. While these Mennonites nominally come here as sectarians, there is every probability that they will with the greatest readiness so far adopt our customs and modes of thought as to become one with us—a happy and homogenous people.—*S. F. Chronicle.*

THE MOST MORAL CITY.

It is known by all that the Republican party in its national convention of 1856, after nominating John C. Fremont for the Presidency, proceeded to declare, among other things, that "the Constitution confers upon Congress sovereign power over the Territories of the United States, and that in the exercise of this power it is both the right and the duty of Congress to prohibit in the Territories those twin relics of barbarism—polygamy and slavery."

The Republican party has had control of the Federal government for more than thirteen years, but polygamy still exists in the bailiwick of Brigham Young.

And now Hon. J. M. S. Williams, a Republican member of the present House of Representatives from the Cambridge District in Massachusetts, who, as living under the eaves of Harvard College and basking in the full light of Boston religion, ought to know what culture and Christianity

can do for the morals of the community outside of the Mormon realm, in addressing his Baptist brethren at Washington on Monday evening last, at their monthly "Social Union," spoke as follows—we quote from the *National Republican*, the leading Administration organ at the Federal capital:—

"He referred to the fact that Harvard College had more than a million of property not taxed, and the question in Massachusetts came up both in a collegiate and religious form. He contended that the government should not tax church property, which was intended for the benefit of so many people. He believed it was better to have any religion than none at all. He favored even the exemption of the Mormon Church from taxation. *Salt Lake City was the most moral city in the world, and it was due to the restraining influences of their religion.*"—*Patterson, (N. J.) Guardian, April 3.*

MAN 500,000 YEARS OLD.

The New York *Nation* condenses from an English scientific periodical some interesting speculations of Dr. Alfred Russell Wallace, on the probable antiquity of the human species. They may startle, it says, even those who have come to the conclusion that 6,000 years carry us but a small way back to the original home. In fact, in Dr. Wallace's reckoning, 6,000 years are but as a day. He reviews the various attempts to determine the

antiquity of human remains or work of art, and finds the bronze age in Europe to have been pretty accurately fixed at 3,000 or 4,000 years ago, the stone age of the Swiss lake dwellings at 5,000 or 7,000 years "and an indefinite period." The burnt brick found sixty feet deep in the Nile alluvium, indicates an antiquity of 20,000 years; another fragment at seventy-two feet gives 30,000 years. A human skeleton found at a depth of sixteen feet below

four hundred buried forests superposed upon each other has been calculated by Dr. Fowler to have an antiquity of 50,000 years. But all these estimates pale before those which Kent's cavern at Torquay legitimates. Here the drip of the stalagmite is the chief factor of our computations, giving us an upper floor which divides the relics of the last two or three thousand years from a deposit full of the bones of a distinct mammalia, and gluttons, indicating an Arctic climate.

Names cut in the stalagmite more than 200 years ago, are still legible; in other words, where the stalagmite is twelve feet thick and the drip still very copious, not more than a hun-

dredth of a foot has been deposited in two centuries—a rate of five feet in 100,000 years. Below this, however, we have a thick, much older and more crystalline (i. e., more slowly formed) stalagmite, beneath which again, "in a solid breccia, very different from the cave earth, undoubted works of art have been found." Mr. Wallace assumes only 100,000 years for the upper floor and about 250,000 for the lower, and adds 150,000 for the immediate cave earth, by which he arrives at the sum of half a million years that have probably elapsed since human workmanship were buried in the lowest depths of Kent's cavern."

UTAH NEWS.

We take the following from the *Deseret News* :—

The members of the 19th Ward met last evening (May 24) at their meeting house, for the purpose of organizing a Branch of the United Order. President D. H. Wells, Elder A. M. Musser, and George B. Wallace, President of this Stake of Zion, were present on the stand. President D. H. Wells stated that according to appointment the meeting had come together for the purpose of organizing a branch of the United Order, and he had learnt from the Bishop that some 430 names had been given in to join it. The object of this Order, he said, was to promote the kingdom of God, to come to a greater union of action in developing our own resources so as to make us self-sustaining. We left wicked Babylon and came to Zion to serve God and to leave Babylon behind, but instead of that some of us had brought Babylon with us and had progressed in the wrong direction the last few years. It was the object of this Order to turn our energies in the right direction and to devote all our means and interest for the kingdom. We had professed to serve God with full purpose of heart, while many of us had not done so, but sustained the wicked and been slack in keeping the commandments of God. Now the Lord wanted to test us as he had done before; we stood it then, and he was pleased with us, and we should stand it now. A vote was taken who of the congregation wanted to join the Order, when all present voted. President Wells advised the Saints to go to work, as soon as practicable, and benefit themselves by their own productions and manufactures, and called their attention to several branches of industry that would be profitable to them. The nominating committee reported the following officers:—A. H. Raleigh, President; Wm. Asper and Henry Arnold, Vice Presidents; A. W. Carlson, Secretary; E. Beezley, Assistant Secretary; Henry Grow, Sen., Treasurer; George Nebeker, Wm. Ridd, and Alfred Solomon, Directors; all of whom were unanimously elected. Thirty more names were handed in to join the Order.

It is gratifying to note that suits of home manufactured cloth are now being sought for in preference to the imported article by people generally. The home stuffs are rising rapidly on their intrinsic merits.

There was a large attendance of the members of the 13th Ward last evening at the Assembly Rooms, for the purpose of organizing a branch of the United Order. Bishop E. D. Woolley offered the opening prayer and made some

preliminary remarks. Elder A. M. Musser read the articles of agreement and the rules adopted by the United Order at St. George. President D. H. Wells called for an expression from the assembly whether they were willing to enter into a United Order for the purpose of sustaining themselves and the interests of the kingdom of God. A large majority of those present signified their assent. He then presented separately the following persons for offices, who were all unanimously elected:—President, E. D. Woolley; 1st Vice-President, Fernald Little; 2nd Vice-President, H. G. Park; Secretary, George Goddard; Assistant Secretary, John B. Maiben; Treasurer, James T. Little; Directors, Millen Atwood, A. M. Mortimer, George Naylor, Francis Platt and Joseph E. Taylor. President D. H. Wells said the officers of the United Order of the different Wards throughout the city would meet together and discuss the best method of organizing the necessary manufacturing and industrial interests according to law, and fulfill the design of utilizing labor and economizing means. A great many strange rumors were afloat that had no foundation in fact. The property of individuals was not required, but a combination for our mutual benefit. He believed in freedom and independence, and in no instance had he exercised his volition in a greater degree than when he enrolled his name to be identified with the Latter-day Saints, and agreed to be governed and controlled by the authority of the holy Priesthood and to be guided in all things for the upbuilding of the kingdom of God. It was incumbent upon us all to have confidence in the Lord and each other, and to take such a course that this confidence might be established. We then should live to enjoy the full fruition of all our hopes in the everlasting Gospel.

TO WHOM IT MAY CONCERN.—This is to certify that George Stringam was cut off from the Church of Jesus Christ of Latter-day Saints by the High Council of this Stake of Zion on March 10th, 1874.

May 28th, 1874.

JOHN PIKE, Clerk of High Council.

On Saturday, the *Nevada Company* of Saints arrived in this city with the regular evening train from Ogden. The company, which left Liverpool May 6th, was under the charge of Bishop L. J. Herrick, with Elders Robert McQuarrie and John E. Rees as his counselors. With the exception of stormy weather the Saints had a pleasant passage over the Atlantic. Bishop Herrick remained behind at Pittsburg.

From the *Salt Lake Herald*:—

Col. J. J. Critchelow, Indian agent at the Uintah Reservation, arrived in the city Thursday evening, having been ten days in making the trip owing to the frightful condition of the roads. The Colonel brings an excellent report of the actions and condition of his wards, who number at the present time between 400 and 500. Some of the Indians are engaging in agricultural pursuits, and are cultivating about 300 acres of land. They have 200 acres seeded to wheat, about fifty acres planted with potatoes, and the balance in turnips and other vegetables. This land they are cultivating themselves—they have done all of the plowing, dug the necessary irrigation ditches, and seem bent on gathering a bounteous harvest. The only assistance rendered by the whites is to keep the farming implements in order. Many of the noble reds are also raising cattle, some owning herds of fifty head and upwards. The Colonel says his Indians generally confine themselves to the reservation, and are desirous of remaining at peace with other tribes and with the whites. Colonel C. expects to erect a suitable building at the agency this Summer, and to establish a school for the young aborigines, and hopes to interest them in the subject of education. Altogether, Colonel Critchelow thinks his Indians are a better lot than are usually seen, and there are more "good Indians" among them than are usually found in that number of redskins above ground.

A telegraphic dispatch to the *Sacramento Record* says—The President sent several nominations to the Senate to-day, among them that of Jas. B. McKean to be Chief Justice of the Supreme Court of Utah Territory.

From the *Ogden Junction* :—

Last night (May 29) Ogden was visited by one of the severest hurricanes which has disturbed its quietude for many years. It was a tearing nor'easter. Sweeping down from the mountains it carried before it every article lying round loose, and beating against buildings it shook the stoutest structures and roared like thunder. All night the rude blast howled, and raged, and tore around, till it seemed as though Pandemonium had opened its awful gates and the troops of demons were bent on destroying the city. The light of this morning showed the night's destruction. As soon as the wind went down, people began to hunt around for stray stovepipes, boilers, barrels, tubs, clothing and articles too numerous to describe, swept away by the pitiless blast. Shanties were turned topsy-turvy, fences with a decided leaning towards a westernly aspect, and trees were stripped of foliage, while the ground was strewed with unripened fruit, and flowers looked as if they had passed through scorching flames. On the bench, shade and fruit trees were broken down, and in some cases carried away for several rods, and in others torn up by the roots. A workshop, partly erected, belonging to Mr. W. Chapple, was capsized; Mike Butler's new frame house, not yet finished, was tipped over; Wheeler's lumber yard was dilapidated, fence prostrated, and lots of boards carried away down to Bushmiller's brewery. Down town, the roof of Z. C. M. I. was ripped and rolled up like paper, while a brick chimney lay in fragments in the street; the east gable of the M. E. Church was blown in; Fowler's workshop was demolished and some of his slabs broken; a two-story frame house on Fourth street, in process of construction, was upset; and the sidewalks were blocked up with fallen shade trees. Outhouses were deposited in strange localities, and an air of dilapidation pervaded the city. The worst misadventure befell Mr. T. B. Heller's house and family. When the hurricane came on, Mr. Heller and his hired man tried to brace the upper part of the house—a two-story adobe building—with timbers. But the roof was lifted, the walls fell in, the hired man had his left arm broken in two places, and three gashes of a serious nature cut in his head. Mr. Heller was hurt in the face, and every member of his family, and also of the La Monte family in the house, was more or less injured. The boy La Monte has a painful wound in the leg, and Mrs. Heller is similarly afflicted. Dr. T. E. Brown thinks it doubtful whether Peter, the hired man, will live. At the depot signs were strewed around like the leaves from the trees; a small frame building was carried away till the pump of the Junction Hotel barred further traveling; several lumber shanties were damaged, and the U. N. freight-house was badly demoralized. Altogether this was the biggest blow Ogden has experienced for a long time, and it is to be hoped it will be many years more before the dose will be repeated.

We are happy to say that the junction question is settled. A satisfactory arrangement was effected last evening, whereby the junction of the railroads at Ogden is made permanent. We do not feel at liberty at present to explain the particulars of the settlement, but the result is every way satisfactory to the people of Ogden.

A woman by the name of Scott died last Friday (May 29) at Salt Lake. The physician who waited on her certified that she died of typhoid fever. But people living near by were not satisfied. Ugly rumors reached the Coroner, and he proceeded to act as his duty required. At the inquest one witness testified that deceased had informed her that she paid \$200 last fall to have an operation performed on her, and that she had recently paid \$35 more for its completion. Drs. Benedict and Fowler made a *post mortem* examination and demonstrated that an abortion had been procured, with instruments, and that from the effects of this the woman had died. Dr. Crane was thereupon arrested, charged with the above ugly crime, and now lies in durance vile waiting for an examination.